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## Gazette Opinion: Least-worst bill on 'constituency' funds needs to pass

First there were five, now there are two. Two bills still alive address the glaring problem of "constituency accounts."

Regrettably, the best proposal - to eliminate these accounts that elected officeholders have been allowed to maintain for "constituent services" - died on a party-line vote. Sen. Roy Brown, R-Billings, proposed ending the practice and requiring all existing accounts to be closed by year's end. His bill never made it out of committee, and all 26 Senate Democrats voted against blasting it out to the House floor.

The lack of bipartisan support is surprising considering that constituency accounts have been around for years, but it wasn't until this year, with Democrats in control of the governor's office and Senate, that momentum built to resolve the problems they create.

### Halting gift solicitations

With Brown's bill dead, legislators must go with the least-worst alternative. That's Senate Bill 91, introduced by Sen. Carol Williams, D-Missoula. As amended and passed by the Senate on a 37-13 vote, Williams' bill would put a stop to the most onerous aspects of these accounts. Officeholders could no longer solicit donations.

The only contributions to the accounts would be "surplus" campaign funds. SB91 also requires that officials report expenditures on a semiannual basis to the commissioner of political practices. At present, there is no reporting requirement for expenditures or for receipts.

SB91 states that the account is to be used for "expenses in representing constituents or for travel or expenses related to the individual's elected position."

The shortcoming of such a plan is that these unusual accounts could still be a repository for gifts that create conflict of interest or the appearance of it.

Incumbents who don't face tough re-election opposition, for example, could easily raise "surplus" campaign funds, knowing that they would be used in a constituency account throughout the term of office.

## Regulation better than nothing

But Williams' bill is better than the other survivor, House Bill 462, introduced by Rep. Diane Sands, D-Missoula.

Sands' bill, which passed the House on an 85-14 vote, would continue the practice of officeholders' soliciting and accepting donations for these accounts after they take office.

Williams' bill is the better choice.

The worst possible outcome would be for the Legislature and Gov. Brian Schweitzer to reject both bills. The status quo allows unlimited donations and has no reporting requirements.

That is unacceptable for a state seeking higher ethical standards in government.

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# Sunday Opinion

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## GUEST COLUMN

# Only one constituency account bill deserves to pass

BY JONATHAN MOTL  
and JOHN HEFFERNAN

Over the past 10 years increasing numbers of Montana's elected public officials, from governor to legislators, have closed their campaign accounts and opened new accounts with funds used to cover the costs of communicating with the voters they represent. These so-called "constituency services accounts" were funded by surplus campaign funds and private donations made to then-elected public officials after the election.

The legal authority for these accounts is dubious at best. Montana's election laws subject all campaign funds to contribution limits, full disclosure, regular reporting, a money-laundering ban and a corporate donation ban. Incumbents, however, claim that constituency accounts are not campaign accounts and are therefore secret and not subject to limits or disclosure. If this is the case, then logically, Montana's gift ban should apply to these funds.

The gift ban prohibits all incumbents ("public officials") from accepting any amount greater than \$50 while performing their public duties.

So which is it? Are these constituency services accounts disguised campaign funds or are they subject to the gift ban? The Montana House and Senate have now each passed a bill addressing this issue. Only Senate Bill 91, introduced by Sen. Carol Williams, D-Missoula, and advanced to the House by a vote of the Senate, is worthy of support.

SB91 clarifies law by allowing for constituency services accounts and provides that a successful candidate for any public office may create and deposit their surplus campaign funds into such an account, subject to full reporting. No other funds can be deposited in the account. Election integrity is maintained because the surplus campaign funds were raised subject to election laws, including disclosure, donation limits, the money-laundering ban and the corporate

donation ban. SB91 does not change Montana's gift ban.

The House addressed this issue by passage of HB462 offered by Diane Sands, D-Missoula. HB462 also allows for constituency services accounts funded by surplus campaign funds, then takes the accounts two steps further by allowing proceeds from a "public event or function" and "donations from individuals" to be deposited into such an account. A new set of contribution limits are created for the account along with reporting requirements.

HB462 could be aptly titled the "Incumbency Protection Act," since it unfairly provides an enormous fundraising advantage to incumbents. HB462 allows an incumbent running for re-election to simultaneously open and maintain a constituency account and a campaign account, each subject to separate limits. A challenger can only have a single campaign account subject to single contribution limits. Given that election law is subject to rigorous

constitutional examination, there is a fairness or equal protection problem with HB462 in that it allows a contributor to provide twice as many dollars to the incumbent. HB462 is also a full-scale attack on the gift ban, as it legalizes the practice of an incumbent taking money from individuals and events while performing the duties of a public office.

The reasons to oppose HB462 are:

1) It is likely unconstitutional and it guts Montana's ethics or gift ban requirements by allowing a public official to solicit non-campaign funds while in office; and,  
2) It unfairly favors incumbents by tilting the playing field further in their favor.

Montanans should support SB91. It provides for a legitimate use of surplus campaign funds that benefits the public. SB91 does not attack Montana's gift ban and SB91 does not open a new avenue for money to corrupt Montana's political process.

*Jonathan Motl and John Heffernan are board members of Montana Common Cause.*



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## **Guest Opinion: 'Constituency' accounts must not violate state gift ban**

**By JONATHAN MOTL  
and JOHN HEFFERNAN**

Over the past 10 years, increasing numbers of Montana's elected public officials, from governor to legislators, have closed their campaign accounts and opened new accounts with funds used to cover the costs of communicating with the voters they represent. These so-called "constituency services accounts" were funded by surplus campaign funds and private donations made to then-elected public officials after the election.

The legal authority for these accounts is dubious at best. Montana's election laws subject all campaign funds to contribution limits, full disclosure, regular reporting, a money-laundering ban and a corporate donation ban. Incumbents, however, claim that constituency accounts are not campaign accounts, and are therefore secret and not subject to limits or disclosure. If this is the case, then logically, Montana's gift ban should apply to these funds. The gift ban prohibits all incumbents ("public officials") from accepting any amount greater than \$50 while performing their public duties.

### **Support SB91**

So which is it? Are these constituency services accounts disguised campaign funds or are they subject to the gift ban? The Montana House and Senate have now each passed a bill addressing this issue. Only Senate Bill 91, introduced by Carol Williams and advanced to the House by a vote of the Senate, is worthy of support.

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## Unfair advantage

HB462 could be aptly titled the "Incumbency Protection Act" since it unfairly provides an enormous fundraising advantage to incumbents. HB462 allows an incumbent running for re-election to simultaneously open and maintain a constituency account and a campaign account, each subject to separate limits. A challenger can only have a single campaign account subject to single contribution limits.

Given that election law is subject to rigorous constitutional examination, there is a fairness or equal protection problem with HB462 in that it allows a contributor to provide twice as many dollars to the incumbent. HB462 is also a full-scale attack on the gift ban, as it legalizes the practice of an incumbent taking money from individuals and events while performing the duties of a public office.

The reasons to oppose HB462 are: 1) It is likely unconstitutional and it guts Montana's ethics or gift ban requirements by allowing a public official to solicit noncampaign funds while in office; and, 2) It unfairly favors incumbents by tilting the playing field further in their favor.

Montanans should support SB91. It provides for a legitimate use of surplus campaign funds that benefits the public; does not attack Montana's gift ban; and does not open a new avenue for money to corrupt Montana's political process.

*Jonathan Motl of Helena and John Heffernan of Missoula are board members of Montana Common Cause.*

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Montanans should support SB91. It provides for a legitimate use of surplus campaign funds that benefits the public; does not attack Montana's gift ban; and does not open a new avenue for money to corrupt Montana's political process.

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March 5, 2006

Mike Cooney  
President  
Montana Senate

Carol Williams  
Majority Leader  
Montana Senate

Christine Kaufmann  
Member  
Montana Senate

Dear Mike, Carol, and Christine:

I write in regard to HB 462, the constituency services account bill that has passed the House and is now before the Senate. I write to ask that the three of you work to insure that HB 462 is defeated as SB 91 (now before the House) is by far the preferred solution on this issue.

I realize that there is a genuine concern that people of modest means be assisted in their efforts to run for public office and to service constituents once they are in public office. However, HB 462 creates problems far greater than any good it attempts to achieve. HB 462 creates a system of two contribution limits (one for a campaign account and one for constituency services account) for incumbents while leaving in place only one limit for challengers. That creates a fairness or equal protection issue that




will likely cause the law to be voided. HB 462 further attacks the gift ban by allowing an event-focused slush fund rollover into the account.

In addition to its two major technical problems HB 462 will create an entire new platform for campaign related complaints. Because a constituency account is semi-permanent (it only closes upon an office holder leaving office) under HB 462 an incumbent could legally simultaneously take a full limit contribution from the same individual into her campaign account and her constituency account. If that happens then the challenger is logically going to file a complaint claiming that the constituency donation is really a campaign donation and/or that the candidate is "coordinating" the use of the constituency account such that it is an illegal second limit campaign contribution disguised as a constituency contribution. The full mess this creates is likely beyond anticipation.

In contrast to the above SB 91 offers a clean approach. It converts funds on a one-time basis from a campaign account into a constituency services account. Election integrity is maintained because the funds were raised subject to election laws, including disclosure, donation limits, the money laundering ban and the corporate donation ban. SB 91 does not change Montana's gift ban. SB 91 allows no other funds than the surplus campaign funds. Because funds cannot be solicited into the account during a campaign there should be no election-related campaign issues.

With the above in mind, I ask that three of you discuss this issue and decide a course that assures HB 462 is defeated. I will be glad to discuss this issue further with you.

Sincerely,

A handwritten signature in black ink, appearing to be 'Jonathan Motl', written over a horizontal line.

Jonathan Motl